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How to compile a record on appeal

In our last column (“Filing a notice of appeal and docketing statement for the court,” Jan. 27), we discussed the initial steps in perfecting an appeal to the Illinois Appellate Court — the filing of the notice of appeal, which confers jurisdiction upon the reviewing court, and the docketing statement, which provides the reviewing court with general information about the case.

Now we turn to compiling the record on appeal.

The burden rests with the appellant to create a complete record on appeal. If information is missing from the record, the appellate court can presume that the missing material supports the trial court’s decision. Moreover, the appellant’s failure to timely file the record on appeal can result in the dismissal of the case.

Alternatively, the appellate court can affirm the judgment from which the appeal is sought. However, the appellant’s failure to timely file the record on appeal does not deprive the appellate court of jurisdiction to hear the matter; therefore, the appellate court can choose to consider the appeal on its merits.

Illinois Supreme Court Rule 321 provides that the record on appeal shall consist of the judgment appealed from, the notice of appeal and the entire original common-law record, unless the parties stipulate for, or the trial or appellate court orders, less.

The common-law record includes every document filed; every judgment and order entered; and any documentary exhibits offered and filed by any party. The appellate court, upon motion, can also order that other exhibits be included in the record. The record on appeal also includes any report of proceedings prepared in accordance with the court rules.

As discussed in our last column, the docketing statement requires that the attorney for the appellant certify that he or she made both a written request to the clerk of the circuit court to prepare the record on appeal and a written request to the court reporting personnel to prepare the transcripts of the proceedings in the trial court.

With regard to the preparation of the record on appeal in the 1st District Appellate Court, the Cook County circuit clerk website contains a “Request to Prepare a Record on Appeal” form. The appellant shall file the form as well as a deposit of \$110 in Room 801 of the Daley Center and attach a copy of the completed form to the docketing statement.

In all other appellate court districts, the appellant shall write a letter to the appeals clerk in the circuit clerk’s office requesting that the record on appeal be prepared. The appellant shall then attach a copy of the letter to the docketing statement.

With respect to the report of proceedings, Illinois Supreme Court Rule 323 provides that it may include evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for the decision and any other proceedings that the party submitting it desires to have incorporated in the record on appeal.

With regard to the preparation of the transcripts, in any appellate court district, the appellant can write a letter to the court reporting personnel setting forth the dates of the hearings that need to be transcribed. The court reporter will then directly transmit the original transcripts to the circuit clerk for inclusion with the record on appeal.

However, it is good practice to speak directly with the court reporter to verify that he or she plans to send the transcripts to

ON APPEAL



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the circuit clerk. If the appellant already has the transcripts in his or her possession, or the court reporter sends the transcripts directly to the appellant’s attorney rather than to the circuit clerk, the parties can stipulate or the court can order that the transcripts be included in the record on appeal.

The appellant shall then take the stipulation or court order and the transcripts to the circuit clerk so that the appeals clerk can prepare the transcripts for inclusion in the record on appeal.

Although the docketing statement expressly requires that the appellant verify that he or she has requested that the clerk prepare the record on appeal and that the court-reporting personnel prepare the transcripts, there is one more component of the record that the appellant must compile — the exhibits.

If the trial court maintained possession of the exhibits, the appellant must arrange to have the exhibits sent to the circuit clerk so that the appeals clerk can include the exhibits in the record on appeal. If either of the parties maintained possession of the exhibits, the parties can stipulate or the court can order that the exhibits be included in the record on appeal.

The appellant shall then take

the exhibits, along with the stipulation or court order, to the circuit clerk so that the appeals clerk can include the exhibits in the record on appeal.

After the circuit clerk compiles the record on appeal, the clerk will notify the appellant that the record is available. The appellant must arrange to have the record on appeal timely filed with the appellate court.

Illinois Supreme Court Rule 325 provides various alternatives for the transmission of the record on appeal. Upon payment of fees and costs, the circuit clerk shall transmit the record to the reviewing court or, upon request, deliver it to the appellant for transmission.

Alternatively, at the request of any party, the clerk of the trial court shall deliver to the reviewing court a certificate that the record has been prepared and certified in the form required for transmission to the reviewing court. The timely filing of the certificate in the reviewing court shall be considered the filing of the record on appeal.

Once the record on appeal or the certificate in lieu of the record has been filed, the clerk of the reviewing court shall provide notice of filing to all parties to the appeal.

Stay tuned for our discussion of the next step in the appellate journey — the drafting of briefs.